IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4625 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEVILAL SUKHLAL KALAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4625 of 2002

MR JB DASTOOR for Petitioner No. 1

MR NAVIN N CHAUHAN for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

Heard learned counsel Mr. JB Dastoor for the petitioner. The petitioner is permitted to join the Jail Superintendent, Special Jail, Porbandar as party respondent no. 3. The counsel is directed to amend the

petition forthwith. Ld. AGP appearing for the State Mr. AY Kogje is directed to waives service of rule on behalf of respondent no. 3 joined today. At the request of ld. counsel, this petition is taken up for final hearing today.

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City dated 16.2.2002 in exercise of powers vested in him/her by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act'). The detaining authority has branded the detenu as bootlegger and, therefore, a dangerous person because of his anti-social activities and passed the detention order under challenge.

The order of detention has been assailed on various grounds mentioned in the memo of petition, however, ld. counsel has mainly focussed argument on one ground and has submitted that the order under challenged is passed by the authority without proper application of mind on the solitary incident recorded by the police against the petitioner. as per the record, it is clear that the offence punishable under the Bombay Prohibition Act was registered on 7.12.2001 and thereafter statement of two witnesses were recorded concerning the activities of the petitioner on 30.1.2002 and 31.1.2002. These statements were verified by the detaining authority on 15.2.2002 and the order of detention is passed on 16.2.2002. Placing reliance on the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) vs. State of Gujarat reported in 2000(3) GLR p. 2696, it is submitted that the ratio of this decision is clearly applies to the facts of this case. In the cited case, the proposal for detention was received by the detaining authority on 27th August and the verification of the statements of three witnesses were made on 29th August by the detaining authority and the order of detention was passed on 30th August. The Court held that the exercise of powers by detaining authority was mechanically one and devoid of application of mind. Ld. Single Judge has considered the decision of this Court in the case of Kalidas C. Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR p. 1659. The ratio of this decision in the case of the Kalidas Kahar (supra) is referred by the ld. Single Judge in para-9 of the cited decision.

Ld. AGP Mr. Kogje does not dispute that the order

of detention was passed on the next date in the present case also. So, in view of the settled legal proposition and the subsequent decision delivered by this very Bench in similar type of cases, the detention order shall have to be turned down.

In the result, this petition is allowed. The impugned order of detention dated 16.2.2002 and 25.2.2002 are quashed and set aside. The detenu is ordered to be set at liberty forthwith , if he is not required to be detained in any other case. Rule made absolute. DS Permitted.

(C.K. BUCH, J.)

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